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COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 9 of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Joint written statement submitted by the Friends World Committee for Consultation, Caritas Internationalis and the Commission of the Churches on International Affairs of the World Council of Churches, non-governmental organizations in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 March 1996]

Internally displaced persons

1. The increasing number of internally displaced persons throughout the world is deeply disturbing. Many lose their lives. Forced displacement also breaks up families, cuts important community ties, terminates stable employment, precludes or forecloses formal education opportunities, and deprives vulnerable groups within the society of vital services. The international community must strengthen its efforts to provide assistance and protection to the displaced. The best method of preventing displacement is the strict observance and full realization of all human rights for everyone.

2. At its fifty-first session, the United Nations Commission on Human Rights adopted, without a vote, resolution 1995/57 entitled "Internally displaced persons". 1/ The resolution commended the work of the representative of the Secretary-General, welcomed his catalytic role in raising awareness, and extended the mandate for a further three years.

3. The resolution also encouraged the representative to continue his review of the need for protection of and assistance to internally displaced persons, and in particular his compilation and analysis of existing rules and norms. We welcome the completion of this Compilation, issued as document E/CN.4/1996/52/Add.2, dated 5 December 1995.

4. The Compilation concludes that while existing law covers many aspects of particular relevance to internally displaced persons, there remain areas in which the law fails to provide sufficient protection or is ambiguous. In particular, it underscores the need to restate general principles of protection in more specific detail, and to address clear protection gaps in a future international instrument.

5. Existing standards provide significant protection to internally displaced persons. The problem lies primarily in "the unwillingness of States, and/or in non-international conflicts of dissident forces, to observe binding principles". To address this problem, the next step should be the production of a compact and usable body of principles presently applicable to internally displaced persons. In effect, this would be a synthesis of the Compilation, stressing both the universally recognized rights and those of special relevance to internally displaced persons.

6. Concerning the legal protection gaps which exist, the representative should be encouraged to outline the potential form and content of additional legal standards. In this regard, the representative should continue his discussions with the Inter-Agency Task Force on Internally Displaced Persons (convened by the Department of Humanitarian Affairs), the International Committee of the Red Cross, non-governmental organizations and other relevant agencies.

7. In addressing both the root causes of internal displacement and long-term solutions (pursuant to resolution 1995/57, para. 4), particular attention should be given to the gap in legal protection for the property-related needs of the internally displaced. While the right to property is mainly protected by regional human rights conventions and by humanitarian law, there should be a clear recognition of the right to restitution of property lost as a consequence of displacement, or to compensation for its loss.

8. We commend the Government of Peru for inviting the representative and facilitating his visit in August 1995, thus continuing to focus attention on the plight of the internally displaced in particular situations (see E/CN.4/1996/52/Add.1, dated 4 January 1996). More Governments should invite the representative to visit their countries. The single visit during all of 1995 was insufficient.

9. The Governments of the countries visited by the representative to date are urged to act on his recommendations and, in accordance with resolution 1995/57, to inform him of measures taken. Measures undertaken at a national level are of utmost importance and such information should be made publicly available.

10. The High Commissioner for Human Rights, together with the United Nations High Commissioner for Refugees, the United Nations Development Programme, and other relevant agencies, in cooperation with the representative, should ensure that there is appropriate follow-up to the visits made by the representative, and that measures undertaken are adequate.

11. The severely restricted resources provided for the work of the representative remains a matter of great concern. The acknowledgement and appreciation of the importance of the work the representative has done to date must be reinforced with the provision of adequate means. In particular, resources will be required to produce a compact and usable body of principles, to undertake future visits, and to ensure appropriate follow-up.

12. We urge the Commission on Human Rights to:

(a) Welcome the **Compilation and analysis of legal norms** submitted by the representative of the Secretary-General (E/CN.4/1996/52/Add.2, dated 5 December 1995).

(b) Recognize the fact that **existing standards can provide significant protection** to internally displaced persons and that inadequate protection is primarily a result of the unwillingness to observe binding obligations.

(c) Recommend as the next step the **production of a compact and usable body of principles** applicable to internally displaced persons, based on the findings of the Compilation.

(d) Ask the representative to give further consideration to the **question of new international standards** to fill the legal gaps which exist.

(e) Recognize the **right to restitution of property** lost as a consequence of displacement, or to **compensation** for its loss, in light of the connection between property issues, root causes of internal conflict and long-term solutions.

(f) Urge Governments to **invite the representative to visit** their countries, and encourage Governments of those States visited by the representative to **make information publicly available** on subsequent measures undertaken at a national level.

(g) Request the High Commissioner for Human Rights, in cooperation with other relevant agencies, to **ensure that there is appropriate follow-up** to the visits made by the representative.

(h) Recommend a **significant increase in the resources available** for the work of the representative of the Secretary-General.

Note

1/ Introduced by Austria, co-sponsored by Argentina, Australia, Austria, Bulgaria, Canada, Colombia, Costa Rica, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, the Netherlands, Nicaragua, Norway, Peru, Portugal, the Republic of Korea, the Russian Federation, Switzerland, Sweden, the United States of America, and Uruguay.

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COMMISSION ON HUMAN RIGHTS
Fifty-second session

Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the World Society of Victimology, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 March 1996]

1. The history in the disputed State of Jammu and Kashmir of article 21 (3) of the Universal Declaration of Human Rights, holding that "the will of the people shall be the basis of the authority of government ...", is littered with nine Presidential Rules, against the eight elections of 1951, 1957, 1962, 1967, 1972, 1977, 1983, 1987. These elections too have been condemned as rigged and unrepresentative.

2. Participation in the conduct of public affairs is a basic human right increasingly prized by people throughout the world. The right to take part in government is proclaimed and guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and is recognized in many other treaties and declarations.

3. India is desperate for the return of a political process and has plans to hold elections in the disputed State of Jammu and Kashmir. The popular resistance of the people of Kashmir makes the socio-political habitat of Kashmir exceptionally abnormal.

4. The litmus test for judging India on the standard scale of human values remains the treatment of over 2 million Kashmiris displaced since 1947, its respect for article 26 (2) of the Universal Declaration of Human Rights, in "strengthening of respect for human rights and fundamental freedoms" and in keeping its pledge in regard to the right of self-determination of the people of Kashmir.

5. The 2 million displaced Kashmiris continue to suffer political and legal prejudice by being denied their right to return to their homes "in safety and dignity". People of Kashmir have suffered five displacements. The displacement of Kashmiri Muslims has been State sponsored and that of Kashmiri Pandits circumstantial. Some 1.5 million Kashmiri Muslims are refugees in Pakistan and 500,000 remain displaced in Azad Kashmir. Quite a large number of these displaced Kashmiris remain spread around the globe.

6. Security Council resolution 47 (1948) of 21 April 1948 charged the State of India to ensure that "all citizens of the State who left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens".

7. The Nehru-Abdullah agreement concluded on 20 July 1952 at Delhi states as follows:

> "It was agreed that:- special provision should be made to provide for the return of those permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with disturbances of 1947 or in fear of them. If they return they should be entitled to the rights and privileges and obligations of citizenship."

8. The legislature of Jammu and Kashmir State passed its Resettlement Bill of the Jammu and Kashmir Assembly on 10 May 1982, reinforcing the right of the refugees to return to their homes. The Government of India, to frustrate the ability of the displaced to return to their homes in Kashmir, sought Supreme Court reference on the matter. The mala fides are to stall the active legislation on the right of the displaced people of Kashmir to return.

9. The civilized world, through the United Nations, has to enforce its formal locus standi and demand compliance with international law and appeal to general humanitarian values, in particular in regard to these displaced people.

10. India, in regard to the State of Jammu and Kashmir, in her letter S/628 of 1 January 1948 addressed to the President of the Security Council, invoked Article 35 of the Charter of the United Nations for an immediate action of the Security Council to avoid a breach of "international peace". At the 226th meeting, on 6 January 1948, of the Security Council, India and Pakistan,

in reply to the two identical telegrams of 6 January sent by the Security Council President, affirmed their intention to conform to the Charter of the United Nations.

11. Ever since, the people of Kashmir have remained a subject of the United Nations under its responsibility for the maintenance of international peace and security. The United Nations has in part accomplished its package of a cease-fire, appointment of a Plebiscite Administrator, withdrawal of forces, delegation of powers to United Nations personnel and the holding of a free, fair and impartial plebiscite under United Nations machinery.

12. The people of Kashmir, identifiable under the State Subject Notification No. 1-L84 of 20 April 1927, have remained locked in a conflict with India since 6 January 1948. Their pursuit of the right to self-determination is now the long-unresolved dispute at the United Nations. The right to self-determination is fundamental to the enjoyment of any other human right.

13. Political democracy cannot be isolated from other factors in the life of a country. Kashmir is a subject of the right to self-determination at the United Nations. The United Nations package on Kashmir prescribed for India to make known the withdrawal of her forces to a minimum, and to arrange for the remaining forces to be stationed according to the following principles: "(i) that the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State; (ii) that as small a number as possible should be retained in forward areas" (Security Council resolution 47/1948).

14. Opposed to this bidding of an abridged role of the Indian Army, India committed a breach and has deployed 44 per cent of its military strength in Kashmir. The Army has engaged in massive abuses of human rights, killing nearly 40,000 innocent men, women and children. There are 65 well-known interrogation centres and a number of unidentified underground torture cells. The sexual coup de grâce of women, deaths in custody, disappearances, imprisonment and torture under detention have been documented by United Nations special rapporteurs and NGOs from India and around the globe.

15. "Elections in and of themselves do not constitute democracy. They are not an end but a step, albeit an important and often essential one, on the path towards the democratization of societies and the realization of the right to take part in the governance of one's country as enunciated in major international human rights instruments. It would be unfortunate to confuse the end with the means and to forget that democracy implies far more than the mere act of periodically casting a vote, but covers the entire process of participation by citizens in the political life of their country" (Report of the Secretary-General, A/46/609, para. 76).

16. The people of Kashmir have staged an active armed resistance against the Indian Army since January 1990. The decision to hold elections in the State of Jammu and Kashmir comes after nine spells of Presidential Rule, heavy loss of life and claims that there has been a "warlike situation" in Kashmir.

17. Elections in Kashmir and the exercise of the right to self-determination remain distant. Police and security forces accused of massive abuses of rights cannot be trusted to play a role in balancing between, on the one hand, the need for electoral security and maintenance of order and, on the other hand, the importance of non-interference with rights and the existence of an environment free of intimidation.

18. The Code of Conduct for Law Enforcement Officials adopted by the General Assembly in 1979 imposes a duty of service to the community upon officers of the law (art. 1). This notion necessarily requires that security forces strive to ensure that all citizens benefit from elections that are administratively sound and free of any disruptive forces which seek to undermine the free expression of popular will. The Code of Conduct provides that "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" (art. 2). This includes not only the human right to take part in elections, but all human rights. Police agencies that do not respect fundamental human rights have the potential to create an intimidating atmosphere that will inhibit the electorate and thereby subvert the genuineness of the election's outcome. The essence of a free election eludes human grasp in the present conditions in Kashmir.

19. The Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives (art. 21). The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights state that, by virtue of their right to self-determination, all people have the right freely to determine their political status (common art. 1). This right is echoed in the Declaration on the Granting of Independence to Colonial Countries and Peoples (para. 5), which also provides that the freely expressed will and desire of the people is to guide the transfer of power to them.

20. The announced elections have a ring of suspicion around them. People may not have an informed choice or civic education on the right to self-determination. Even if elections are considered, for one or another, explainable or inexplainable, reason, equal access remains denied to over 2 million Kashmiris. The Indian Government, as a State policy, has not only displaced five generations of people, but has created political and a legal prejudice against their right to return to their homes "in safety and dignity". India continues to disregard its pledge to respect the right of self-determination of the people of Kashmir.